



Senator Feinstein Calls for Energy Refunds After Ninth Circuit Ruling September 9, 2004

Washington, DC – The Ninth Circuit Court of Appeals today ruled that the Federal Energy Regulatory Commission “improperly concluded that retroactive refunds were not legally available” to states affected by the 2000-2001 western energy crisis. The ruling means that FERC has sweeping authority to issue retroactive refunds.

“For far too long, FERC has abdicated its responsibility to order \$9 billion in refunds to California. This ruling now paves the way for FERC finally to act. It is long overdue,” Senator Dianne Feinstein (D-Calif.) said.

Senator Feinstein noted that the Ninth Circuit ruled: **“With FERC abdicating its regulatory authority, California consumers were subjected to a variety of market machinations, such as ‘round trip trades’ and ‘hockey-stick bidding,’ coupled with manipulative corporate strategies, such as those nicknamed ‘Fatboy,’ ‘Get Shorty,’ and ‘Death Star.’”**

Senator Feinstein also sent the following letter to FERC Chairman Pat Wood urging “immediate action” to issue California \$9 billion in refunds:

September 9, 2004

The Honorable Pat Wood III
Chairman
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

Dear Chairman Wood:

As you know, the United States Court of Appeals for the Ninth Circuit ruled today in the case *Lockyer v. FERC* that FERC “improperly concluded that retroactive refunds were not legally available” and remanded the case to FERC for refund proceedings. I urge you to take immediate action to issue California the \$9 billion in refunds it deserves.

The Ninth Circuit stated that FERC’s legally authorized market-based rates were not complied with by the companies selling power into California’s de-regulated marketplace. The Ninth Circuit concluded that “Despite the promise of truly competitive market-based rates, the California energy market was subjected to artificial

manipulation on a massive scale. With FERC abdicating its regulatory authority, California consumers were subjected to a variety of market machinations, such as 'round trip trades' and 'hockey-stick bidding,' coupled with manipulative corporate strategies, such as those nicknamed 'Fatboy,' 'Get Shorty,' and 'Death Star.'"

As a result, the Ninth Circuit found that FERC "misapprehends its legal authority" by stating that the Commission is unable to apply retroactive refunds. Furthermore, the Court concluded that "FERC's construed limitations on its own authority are not supported by a careful examination of the FPA [Federal Power Act]."

It is my hope that FERC consider the case immediately and issue the \$9 billion in refunds that are due to California. Thank you for your consideration of my request and I look forward to your reply.

Sincerely,

Dianne Feinstein
United States Senator

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